

106TH CONGRESS  
1ST SESSION

# S. 1701

To reform civil asset forfeiture, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 1999

Mr. SESSIONS (for himself, Mr. SCHUMER, Mr. THURMOND, Mr. BIDEN, Mrs. FEINSTEIN, Mr. HELMS, and Mr. CLELAND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To reform civil asset forfeiture, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Civil Asset Forfeiture Reform Act of 1999”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Burden of proof.
- Sec. 3. Notice of administrative forfeiture; limitations period for challenges.
- Sec. 4. Time for filing claim; waiver of cost bond.
- Sec. 5. Time for filing a complaint.
- Sec. 6. Probable cause hearing.
- Sec. 7. Award of attorneys’ fees to successful claimants.
- Sec. 8. Special provisions for real property.
- Sec. 9. Compensation for damage to seized property.

- Sec. 10. Uniform innocent owner defense.
- Sec. 11. Release of property in hardship cases.
- Sec. 12. Stay of civil forfeiture case.
- Sec. 13. Prejudgment interest.
- Sec. 14. Seizure warrant requirement.
- Sec. 15. Civil restraining orders.
- Sec. 16. Excessive fines.
- Sec. 17. Civil investigative demands.
- Sec. 18. Access to records in bank secrecy jurisdictions.
- Sec. 19. Cooperation among Federal prosecutors.
- Sec. 20. Access to other records.
- Sec. 21. Statute of limitations for civil forfeiture actions.
- Sec. 22. Destruction or removal of property to prevent seizure.
- Sec. 23. Fungible property in bank accounts.
- Sec. 24. Currency seized from drug couriers.
- Sec. 25. Use of forfeited funds to pay restitution to crime victims.
- Sec. 26. Fugitive disentitlement.
- Sec. 27. Enforcement of foreign forfeiture judgment.
- Sec. 28. Encouraging use of criminal forfeiture as an alternative to civil forfeiture.
- Sec. 29. Application of procedures for drug cases.
- Sec. 30. Application of procedures to other civil forfeitures.
- Sec. 31. Application to alien smuggling offenses.
- Sec. 32. Effective dates.

## 1 **SEC. 2. BURDEN OF PROOF.**

2       Section 981 of title 18, United States Code, is  
 3 amended by adding at the end the following:

4       “(k) BURDEN OF PROOF AT TRIAL.—

5               “(1) IN GENERAL.—At trial—

6                       “(A) the Government shall have the bur-  
 7                       den of proving that the property is subject to  
 8                       forfeiture by a preponderance of the evidence;  
 9                       and

10                      “(B) the claimant shall have the burden of  
 11                      proving any affirmative defense by a preponder-  
 12                      ance of the evidence.

13               “(2) TIMING.—No party shall be required to es-  
 14               tablish that it is able to meet its burden of proof

1 under paragraph (1) until the time of trial, except  
 2 that any party may file a motion for summary judgment  
 3 pursuant to rule 56 of the Federal Rules of  
 4 Civil Procedure at any time.”.

5 **SEC. 3. NOTICE OF ADMINISTRATIVE FORFEITURE; LIMITA-**  
 6 **TIONS PERIOD FOR CHALLENGES.**

7 Section 981 of title 18, United States Code, is  
 8 amended by adding at the end the following:

9 “(l) ADMINISTRATIVE FORFEITURES.—

10 “(1) NOTICE.—

11 “(A) IN GENERAL.—Whenever property,  
 12 other than real property, is seized by a Federal  
 13 law enforcement agency pursuant to subsection  
 14 (b), or is turned over to a Federal law enforce-  
 15 ment agency by a State or local law enforce-  
 16 ment agency pursuant to subsection (b)(2)(C)  
 17 for the purpose of forfeiture under Federal law,  
 18 the Government shall commence administrative  
 19 forfeiture proceedings against the property pur-  
 20 suant to the customs laws (19 U.S.C. 1602 et  
 21 seq.) not later than 60 days after the seizure or  
 22 turnover, unless the Attorney General has filed  
 23 a civil forfeiture complaint, or included the  
 24 property in a criminal indictment, before such  
 25 60-day period has expired. Upon commencing

1 administrative forfeiture proceedings, the seiz-  
2 ing agency shall send notice of the proceedings,  
3 together with information on the applicable pro-  
4 cedures for contesting the forfeiture, to each  
5 party known to the seizing agency at the time  
6 of the seizure to have an ownership or  
7 possessory interest, including a lienholder's in-  
8 terest in the seized property. If the identity or  
9 interest of a party is not determined until after  
10 the seizure but is determined before a declara-  
11 tion of forfeiture is entered, such written notice  
12 and information shall be sent to such interested  
13 party not later than 60 days after the deter-  
14 mination of the seizing agency of the identity of  
15 the party or the party's interest.

16 “(B) RETURN OF PROPERTY.—If the Gov-  
17 ernment does not send notice of a seizure of  
18 property to the person from whom it was re-  
19 ceived in accordance with subparagraph (A),  
20 and no extension of time is granted, the Gov-  
21 ernment shall return the property to that per-  
22 son without prejudice to the right of the Gov-  
23 ernment to commence a forfeiture proceeding at  
24 a later time. If the property is returned under  
25 this paragraph, neither the seizing agency nor

1 any individual agent shall be held liable for the  
2 failure to provide notice. The Government shall  
3 not be required to return contraband or other  
4 property that the person from whom the prop-  
5 erty was seized may not legally possess.

6 “(2) EXTENSION.—

7 “(A) IN GENERAL.—The Attorney General,  
8 the Secretary of the Treasury, or the United  
9 States Postal Service, as applicable, may waive  
10 the requirements of paragraph (1)(A) for good  
11 cause.

12 “(B) DELEGATION OF AUTHORITY.—The  
13 power to grant a waiver may be delegated to a  
14 person of supervisory rank (as defined in sec-  
15 tion 7103(a)(10) of title 5) in the headquarters  
16 office of the seizing agency.

17 “(3) MOTION TO SET ASIDE DECLARATION OF  
18 FORFEITURE.—

19 “(A) IN GENERAL.—Any person entitled to  
20 notice under paragraph (1)(A) who does not re-  
21 ceive such notice may file, not later than 2  
22 years after the date of final publication of no-  
23 tice of seizure of the property, a motion to set  
24 aside a declaration of forfeiture entered pursu-  
25 ant to section 609 of the Tariff Act of 1930

(19 U.S.C. 1609), which motion shall be granted if—

“(i) the moving party had an ownership or possessory interest in the forfeited property, and the Government knew, or reasonably should have known, of that party’s interest and failed to take reasonable steps to provide such party with notice of the forfeiture; and

“(ii) the moving party did not have actual notice of the seizure within sufficient time to file a claim within the time period provided by law.

“(B) SETTING ASIDE DECLARATION OF FORFEITURE.—If the court grants a motion made under subparagraph (A), the court shall set aside the declaration of forfeiture as to the interest of the moving party pending forfeiture proceedings in accordance with the Tariff Act of 1930 (19 U.S.C. 1602 et seq.), which proceedings shall be instituted within 60 days of the entry of the order granting the motion.

“(C) DISPOSED PROPERTY.—If, at the time a motion made under this subparagraph (A) is granted, the forfeited property has been

1           disposed of by the Government in accordance  
 2           with law, the Government shall institute for-  
 3           feiture proceedings under subparagraph (B)  
 4           against a substitute sum of money equal to the  
 5           value of the forfeited property at the time the  
 6           property was disposed of, plus interest.

7           “(D) JUDICIAL REVIEW.—A motion made  
 8           under this subsection shall be the exclusive  
 9           means of obtaining judicial review of a declara-  
 10          tion of forfeiture entered by a seizing agency.”.

11 **SEC. 4. TIME FOR FILING CLAIM; WAIVER OF COST BOND.**

12          (a) IN GENERAL.—Section 608 of the Tariff Act of  
 13          1930 (19 U.S.C. 1608) is amended to read as follows:

14 **“SEC. 608. SEIZURES; CLAIMS; JUDICIAL CONDEMNATION.**

15          “(a) IN GENERAL.—Any person claiming such seized  
 16          vessel, vehicle, aircraft, merchandise, or baggage may file  
 17          a claim with the Customs Service at any time after the  
 18          seizure, provided that the claim is filed not later than 30  
 19          days after the first publication of notice of seizure, or the  
 20          deadline set forth in a personal notice letter received by  
 21          such person, whichever is later. The claim shall be signed  
 22          by the claimant under penalty of perjury and shall contain  
 23          a brief statement of the nature and extent of the claim-  
 24          ant’s ownership interest in the property.

1       “(b) BOND.—Any person filing a claim pursuant to  
2 subsection (a) shall post the bond to the United States  
3 in the sum of \$5,000 or 10 percent of the value of the  
4 claimed property, whichever is less, but not less than  
5 \$250, with sureties approved by the Customs Service. No  
6 bond shall be required if the Secretary approves a claim  
7 filed in forma pauperis. A claim filed in forma pauperis  
8 shall include the information required to complete form  
9 4 in the appendix of forms following rule 48 of the Federal  
10 Rules of Appellate Procedure.

11       “(c) TRANSMITTAL TO UNITED STATES ATTOR-  
12 NEY.—Upon the filing of a claim pursuant to this section,  
13 the Customs Service shall transmit the claim, with a dupli-  
14 cate list and description of the articles seized, to the  
15 United States attorney for the district in which the prop-  
16 erty was seized, or any other district in which a forfeiture  
17 action may be filed pursuant to section 1355(b) of title  
18 28, United States Code. The United States attorney, after  
19 reviewing the matter, may decide, in his or her discretion,  
20 to return the property to the claimant or to reach an ap-  
21 propriate compromise agreement with the claimant with  
22 respect to the property. Otherwise, the United States at-  
23 torney shall proceed to a condemnation of the merchandise  
24 or other property in the manner prescribed in the Federal  
25 Rules of Civil Procedure, Supplemental Rules for Certain



1 Admiralty and Maritime Claims, or shall proceed to in-  
 2 clude the merchandise or other property in an appropriate  
 3 criminal indictment.”.

4 (b) CONFORMING AMENDMENT.—Section 609 of the  
 5 Tariff Act of 1930 (19 U.S.C. 1609) is amended by strik-  
 6 ing “twenty” and inserting “30”.

7 (c) EXEMPTION FROM COST BOND REQUIREMENT.—  
 8 Section 981(d) of title 18, United States Code, is  
 9 amended—

10 (1) by inserting “(1)” after “(d)”; and

11 (2) by adding at the end the following:

12 “(2)(A) A cost bond otherwise required by section  
 13 608 of the Tariff Act of 1930 (19 U.S.C. 1608) shall not  
 14 be required if the claimant—

15 “(i) pledges real or personal property having a  
 16 value greater than or equal to the value of the bond  
 17 that would otherwise be required under section  
 18 608(b) as security against the costs of the Govern-  
 19 ment;

20 “(ii) provides, in any case in which the pledged  
 21 real or personal property is subject to a Federal or  
 22 State recording, certificate of title, or registration  
 23 statute, documentary proof evidencing the ownership  
 24 of the property by the claimant or pledger; and

1           “(iii) files an affidavit under penalty of perjury  
2           setting forth the value of the property and stating  
3           that the claimant is the owner of the property.

4           “(B) Once the claim is referred to the United States  
5           attorney in accordance with section 608(c) of the Tariff  
6           Act of 1930 (19 U.S.C. 1608), the United States attorney  
7           may ask the court to review the facts set forth in the affi-  
8           davit filed under subparagraph (A)(ii).

9           “(C) At the conclusion of the case, the claimant may  
10          move for return of the cost bond, or to rescind the prop-  
11          erty pledge, and the court shall grant such motion if the  
12          court finds that the claim was substantially justified. If  
13          the court denies such motion, or if no such motion is  
14          made, the Government shall retain the bond to the extent  
15          necessary to recover its costs and return the balance to  
16          the claimant. In the case of a property pledge, the Govern-  
17          ment may—

18               “(i) serve upon the claimant an assessment of  
19               its costs, which assessment shall be collectible as a  
20               debt owed to the Government under chapter 176 of  
21               title 28; or

22               “(ii) foreclose on the pledged property to re-  
23               cover its costs.”.

1 **SEC. 5. TIME FOR FILING A COMPLAINT.**

2 Section 981 of title 18, United States Code, is  
3 amended by adding at the end the following:

4 “(m) FILING A COMPLAINT.—

5 “(1) IN GENERAL.—In any case in which prop-  
6 erty has been seized or restrained by the Govern-  
7 ment and a claim has been filed, the Attorney Gen-  
8 eral shall—

9 “(A) not later than 90 days after the date  
10 on which the claim is filed (unless such require-  
11 ment is waived by mutual agreement between  
12 the Government and the claimants), file a com-  
13 plaint for forfeiture in the manner set forth in  
14 the Federal Rules of Civil Procedure, Supple-  
15 mental Rules for Certain Admiralty and Mari-  
16 time Claims, or include a forfeiture count in a  
17 criminal indictment or information, or both; or

18 “(B) return the property pending the filing  
19 of a complaint or indictment.

20 “(2) EXTENSION OF TIME.—

21 “(A) IN GENERAL.—The Government may  
22 apply to a Federal magistrate judge (as defined  
23 in the Federal Rules of Criminal Procedure) in  
24 any district in which venue for a forfeiture ac-  
25 tion would lie under section 1355(b) of title 28  
26 for an extension of time in which to comply

with paragraph (1), which extension shall be granted based on a showing of good cause.

“(B) EX PARTE APPLICATIONS.—If an extension is sought under this paragraph on the basis that the filing required by paragraph (1) would jeopardize an ongoing criminal investigation or prosecution or court-authorized electronic surveillance, the application under subparagraph (A) may be made ex parte.

“(3) FILING OF CLAIM AND ANSWER.—

“(A) IN GENERAL.—Subject to subparagraph (B), upon the filing of a civil complaint, the claimant shall file a claim and answer in accordance with the Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims.

“(B) MOTION TO DISMISS.—After filing a timely claim under subparagraph (A), a party with standing to challenge the forfeiture may, within the time period provided for filing of an answer under rule C(6) of the Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims, file, in lieu of an answer, a motion to dismiss the complaint for failure to comply with rule E(2)(a) of

the Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims, or on any other ground set for in rule 12(b) of the Federal Rules of Civil Procedure. If such motion is denied, the claimant shall file an answer within the period provided by rule 12(a)(4) of the Federal Rules of Civil Procedure, or such other period as the court may determine.

“(4) MOTION TO DISMISS COMPLAINT FOR FORFEITURE.—

“(A) IN GENERAL.—If a complaint for forfeiture is filed, a party with standing to challenge the forfeiture may move to dismiss the complaint for failure to comply with rule E(2) of the Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims, or on any other ground set forth in rule 12(b) of the Federal Rules of Civil Procedure.

“(B) INSUFFICIENCY OF EVIDENCE.—Notwithstanding section 615 of the Tariff Act of 1930 (19 U.S.C. 1615), a party may not move to dismiss the complaint on the ground that the evidence in the possession of the Government at the time the Gov-

1       ernment filed its complaint was insufficient to estab-  
2       lish the forfeitability of the property.”.

3   **SEC. 6. PROBABLE CAUSE HEARING.**

4       Section 981 of title 18, United States Code, is  
5   amended by adding at the end the following:

6       “(n) PROBABLE CAUSE HEARING.—A person with  
7   standing to challenge the forfeiture of property seized  
8   under this section may file a motion for the return of the  
9   property in the manner described in rule 41(e) of the Fed-  
10   eral Rules of Criminal Procedure. If such motion is filed,  
11   the court shall conduct a hearing within 90 days and shall  
12   order the release of the property, pending trial on the for-  
13   feiture and the entry of judgment, unless—

14           “(1) the Government establishes probable cause  
15       to believe that the property is subject to forfeiture,  
16       based on all information available to the Government  
17       at the time of the hearing;

18           “(2) the Government has filed a civil forfeiture  
19       complaint against the property, and a magistrate  
20       judge has determined there is probable cause for the  
21       issuance of a warrant of arrest in rem pursuant to  
22       the Federal Rules of Civil Procedure, Supplemental  
23       Rules for Certain Admiralty and Maritime Claims;

1           “(3) a grand jury has returned an indictment  
2           that includes an allegation that the property is sub-  
3           ject to criminal forfeiture;

4           “(4) the party filing the motion had notice of  
5           the intent of the Government to forfeit the property  
6           administratively pursuant to section 607(c) of the  
7           Tariff Act of 1930 (19 U.S.C. 1607(c)), and failed  
8           to file a claim to the property within the specified  
9           time period;

10          “(5) the property is contraband or other prop-  
11          erty that the moving party may not legally possess;  
12          or

13          “(6) the property is needed as evidence in a  
14          criminal investigation or prosecution.

15 **SEC. 7. AWARD OF ATTORNEYS’ FEES TO SUCCESSFUL**  
16 **CLAIMANTS.**

17          Section 981 of title 18, United States Code, is  
18          amended by adding at the end the following:

19          “(o) ATTORNEY FEES, COSTS, SANCTIONS.—

20               “(1) IN GENERAL.—Except as provided in para-  
21          graph (3), if the party filing a claim in a civil for-  
22          feiture case is not charged with any criminal offense  
23          in a related criminal case, and the court enters judg-  
24          ment for that party on any ground other than a  
25          ground set forth in subsection (r), the court shall

1       order the Government to pay costs and reasonable  
 2       attorneys' fees to the claimant. If the court enters  
 3       judgment in part for the claimant and in part for  
 4       the Government, the court shall reduce the award of  
 5       costs and attorneys' fees accordingly.

6               “(2) SANCTIONS.—If the court enters judgment  
 7       for the Government, and the court determines that  
 8       the claim was frivolous, counsel representing the  
 9       claimant may be subject to sanctions pursuant to  
 10      rule 11 of the Federal Rules of Civil Procedure, and  
 11      the claimant may be ordered to reimburse the Gov-  
 12      ernment for costs.

13              “(3) EXCEPTION.—If the claimant is a  
 14      lienholder with a secured interest in the property  
 15      subject to forfeiture, and the Government agrees to  
 16      accept the claim and pay off the lienholder at the  
 17      conclusion of the case if the Government prevails as  
 18      to other claims, no costs or attorneys fees shall be  
 19      paid to the lienholder.”.

20   **SEC. 8. SPECIAL PROVISIONS FOR REAL PROPERTY.**

21       Section 981 of title 18, United States Code, is  
 22   amended by adding at the end the following:

23       “(p) CIVIL FORFEITURE OF REAL PROPERTY.—

24              “(1) IN GENERAL.—Notwithstanding any other  
 25      provision of law, all civil forfeitures of real property



1 and interests in real property shall proceed as judi-  
2 cial forfeitures. The administrative forfeiture provi-  
3 sions of the Tariff Act of 1930 (19 U.S.C. 1602 et  
4 seq.) do not apply to the forfeiture of real property.

5 “(2) PROCEDURES.—

6 “(A) IN GENERAL.—Except as otherwise  
7 provided in this subsection, real property that is  
8 the subject of a civil forfeiture action shall not  
9 be seized before entry of an order of forfeiture  
10 nor shall the owners or occupants of the real  
11 property be evicted from, or otherwise deprived  
12 of the use and enjoyment of, real property that  
13 is the subject of a pending forfeiture action. In  
14 lieu of issuing an arrest warrant in rem as pre-  
15 scribed by the Federal Rules of Civil Procedure,  
16 Supplemental Rules for Certain Admiralty and  
17 Maritime Claims, the court in which a civil for-  
18 feiture action against real property is pending  
19 shall issue a notice of complaint for forfeiture,  
20 which notice shall be served on the property  
21 owner and posted on the property. The posting  
22 of such notice shall be sufficient to give the  
23 court in rem jurisdiction over the property.

24 “(B) CONSTRUCTIVE SERVICE OF PROC-  
25 ESS.—If the property owner cannot be served

1 with the notice of complaint for forfeiture be-  
2 cause such owner is a fugitive or resides outside  
3 of the United States, and efforts at service pur-  
4 suant to rule 4 of the Federal Rules of Civil  
5 Procedure, are unavailing, or cannot be located  
6 despite the exercise of due diligence, construc-  
7 tive service may be made in accordance with the  
8 laws of the State in which the property is lo-  
9 cated.

10 “(3) SEIZURE PRIOR TO ENTRY OF ORDER OF  
11 FORFEITURE.—Real property may be seized prior to  
12 the entry of an order of forfeiture if the Government  
13 notifies the court that the Government intends to  
14 seize the property before trial, and the court, before  
15 issuing any seizure warrant or arrest warrant in  
16 rem—

17 “(A) issues a Notice of Application for  
18 Warrant, causes the notice to be served on the  
19 property owner and posted on the property, and  
20 conducts a hearing to determine if there is  
21 probable cause for the forfeiture; or

22 “(B) makes an ex parte determination that  
23 there is probable cause for the forfeiture and  
24 that there are exigent circumstances that per-  
25 mit the Government to seize the property.

1           “(4) POST-SEIZURE HEARING.—If the court  
2       issues a seizure warrant or arrest warrant in rem  
3       pursuant to paragraph (3)(B), the court shall con-  
4       duct a prompt post-seizure hearing during which the  
5       property owner shall have an opportunity to contest  
6       the basis for the seizure. If the real property is  
7       seized before a complaint is filed, the Government  
8       shall file a complaint, or institute criminal forfeiture  
9       proceedings, within 90 days of the seizure in accord-  
10      ance with subsection (m).

11          “(5) ACTIONS NOT CONSIDERED SEIZURES.—  
12      For purposes of this section, the filing of a lis  
13      pendens and the execution of a writ of entry for the  
14      purpose of conducting an inspection and inventory of  
15      the property shall not be considered a seizure.

16          “(6) APPLICABILITY.—This subsection applies  
17      only to civil forfeitures of real property and interests  
18      in real property and does not apply to forfeitures of  
19      the proceeds of the sale of such property or inter-  
20      ests, or of money or other assets intended to be used  
21      to acquire such property or interests. Nothing in this  
22      section may be construed to affect the authority of  
23      the court to issue a restraining order affecting real  
24      property.”.

1 **SEC. 9. COMPENSATION FOR DAMAGE TO SEIZED**  
2 **PROPERTY.**

3 Section 2680(c) of title 28, United States Code, is  
4 amended—

5 (1) by striking “law-enforcement” and inserting  
6 “law enforcement”; and

7 (2) by inserting before the period at the end the  
8 following: “, except that—

9 “(1) this chapter and section 1346(b) do apply  
10 to any claim based on negligence involving the de-  
11 struction, injury, or loss of goods or merchandise  
12 while in the possession of any officer of customs or  
13 excise or any other Federal law enforcement officer,  
14 if—

15 “(A) the property was seized solely for the  
16 purpose of forfeiture;

17 “(B) the interest of the claimant is not  
18 forfeited; and

19 “(C) the claimant is not convicted of a  
20 crime for which the interest of the claimant in  
21 the property would be subject to forfeiture  
22 under Federal or State law; and

23 “(2) damage to property occurring in the  
24 course of carrying out a lawful law enforcement  
25 function, such as the disassembly of goods and mer-  
26 chandise, may not be construed to be the result of

1 negligence, unless the law enforcement function was  
 2 carried out in an unreasonable manner”.

3 **SEC. 10. UNIFORM INNOCENT OWNER DEFENSE.**

4 (a) IN GENERAL.—Chapter 46 of title 18, United  
 5 States Code, is amended by inserting after section 982 the  
 6 following:

7 **“§ 983. Innocent owners**

8 “(a) The interest of an innocent owner in property  
 9 shall not be forfeited in any judicial action under any civil  
 10 forfeiture provision of this title, the Controlled Substances  
 11 Act, or the Immigration and Nationality Act.

12 “(b)(1) In this section, the term ‘innocent owner’  
 13 means, with respect to a property interest in existence at  
 14 the time the illegal act giving rise to forfeiture took place,  
 15 an owner who—

16 “(A) did not know that the property was being  
 17 used or was likely to be used in the commission of  
 18 such illegal act, or

19 “(B) upon learning that the property was being  
 20 used or was likely to be used in the commission of  
 21 such illegal act, did all that reasonably could be ex-  
 22 pected to terminate or to prevent such use of the  
 23 property.

24 “(2)(A) In this section, the term ‘innocent owner’  
 25 means, with respect to a property interest acquired after

1 the act giving rise to the forfeiture took place, a person  
 2 who establishes, by a preponderance of the evidence, that  
 3 the person acquired the property as a bona fide purchaser  
 4 for value who at the time of the purchase did not know  
 5 and was reasonably without cause to believe that the prop-  
 6 erty was subject to forfeiture.

7 “(B) In this paragraph—

8 “(i) the term ‘purchaser’ means a person who  
 9 becomes an owner of property or an interest in spe-  
 10 cific property by giving money, goods, or services in  
 11 exchange for such property;

12 “(ii) a purchaser is ‘reasonably without cause to  
 13 believe that the property was subject to forfeiture’ if,  
 14 in light of the circumstances, the purchaser did all  
 15 that reasonably could be expected to ensure that he  
 16 or she was not acquiring property that was subject  
 17 to forfeiture.

18 “(C) An otherwise valid claim under subparagraph  
 19 (A) shall not be denied on the ground that the claimant  
 20 gave nothing of value in exchange for the property if—

21 “(i) the property is the principal residence of  
 22 the claimant;

23 “(ii) depriving the claimant of the property  
 24 would deprive the claimant of the claimant’s only  
 25 means of maintaining adequate shelter in the com-

1 munity for the claimant and all dependents residing  
2 with the claimant;

3 “(iii) the property is not, and is not traceable  
4 to, the proceeds of any criminal offense; and

5 “(iv) the claimant acquired his or her interest  
6 in the property through marriage, divorce, or legal  
7 separation, or the claimant was the spouse or legal  
8 dependent of a person whose death resulted in the  
9 transfer of the property to the claimant through in-  
10 heritance or probate;

11 except that the court shall limit the value of any real prop-  
12 erty interest for which innocent ownership is recognized  
13 under this subparagraph to the value necessary to main-  
14 tain adequate shelter in the community for such claimant  
15 and all dependents residing with the claimant.

16 “(3) Notwithstanding any provision of this section,  
17 no person may assert an ownership interest under this sec-  
18 tion in contraband or other property that is illegal to pos-  
19 sess. Except as provided in paragraph (2)(A), no person  
20 may assert an ownership interest under this section in  
21 property that is the proceeds of any criminal offense, or  
22 is traceable to the proceeds of any criminal offense, irre-  
23 spective of State property law.

24 “(4) An innocent owner defense under this section  
25 is an affirmative defense.

1 “(c) In this section—

2 “(1) the term ‘owner’—

3 “(A) means a person with an ownership in-  
4 terest in the specific property sought to be for-  
5 feited, including a lien, mortgage, recorded se-  
6 curity device, or valid assignment of an owner-  
7 ship interest; and

8 “(B) does not include—

9 “(i) a person with only a general un-  
10 secured interest in, or claim against, the  
11 property or estate of another person;

12 “(ii) a bailee, unless the bailor is iden-  
13 tified, and the bailor has authorized the  
14 bailee to claim in the forfeiture proceeding,  
15 pursuant to the Federal Rules of Civil Pro-  
16 cedure, Supplemental Rules for Certain  
17 Admiralty and Maritime Claims;

18 “(iii) a nominee who exercises no do-  
19 minion or control over the property; or

20 “(iv) a beneficiary of a constructive  
21 trust; and

22 “(2) a person shall be considered to have known  
23 that his or her property was being used or was likely  
24 to be used in the commission of an illegal act, if the  
25 Government establishes the existence of facts and



1       circumstances that should have created a reasonable  
 2       suspicion that the property was being or would be  
 3       used for an illegal purpose.

4       “(d)(1) If the court determines, in accordance with  
 5 this section, that an innocent owner has a partial interest  
 6 in property otherwise subject to forfeiture, or a joint ten-  
 7 ancy or tenancy by the entirety in such property, the court  
 8 shall enter an appropriate order—

9               “(A) severing the property;

10              “(B) transferring the property to the Govern-  
 11 ment with a provision that the Government com-  
 12 pensate the innocent owner to the extent of his or  
 13 her ownership interest once a final order of for-  
 14 feiture has been entered and the property has been  
 15 reduced to liquid assets; or

16              “(C) if neither subparagraph (A) nor (B) is  
 17 reasonably practical under all of the circumstances,  
 18 permitting the innocent owner to retain the property  
 19 subject to a lien in favor of the Government to the  
 20 extent of the forfeitable interest in the property.

21       “(2) To effectuate the purposes of this subsection,  
 22 a joint tenancy or tenancy by the entireties shall be con-  
 23 verted to a tenancy in common by order of the court, irre-  
 24 spective of State law.”.

25       (b) STRIKING SUPERSEDED PROVISIONS.—

1           (1) CIVIL FORFEITURE.—Section 981(a) of title  
2       18, United States Code, is amended—

3                   (A) in paragraph (1), by striking “Except  
4           as provided in paragraph (2), the” and insert-  
5           ing “The”; and

6                   (B) by striking paragraph (2) and insert-  
7           ing the following:

8           “(2) [Reserved].”.

9           (2) DRUG FORFEITURES.—Paragraphs (4), (6),  
10       and (7) of section 511(a) of the Controlled Sub-  
11       stances Act (21 U.S.C. 881(a) (4), (6), and (7)) are  
12       each amended by striking “, except that” and all  
13       that follows before the period at the end.

14           (3) FORFEITURES IN CONNECTION WITH SEX-  
15       UAL EXPLOITATION OF CHILDREN.—Paragraphs (2)  
16       and (3) of section 2254(a) of title 18, United States  
17       Code, are each amended by striking “, except that”  
18       and all that follows before the period at the end.

19       (c) CONFORMING AMENDMENT.—The analysis for  
20       chapter 46 of title 18, United States Code, is amended  
21       by inserting after the item relating to section 982 the fol-  
22       lowing:

“983. Innocent owners.”.

1 **SEC. 11. RELEASE OF PROPERTY IN HARDSHIP CASES.**

2 (a) IN GENERAL.—Chapter 46 of title 18, United  
3 States Code, is amended by inserting after section 984 the  
4 following:

5 **“§ 985. Release of property to avoid hardship**

6 “(a) IN GENERAL.—A person who has filed a claim  
7 in a civil forfeiture action governed by the procedures set  
8 forth in this chapter is entitled to release pursuant to sub-  
9 section (b) of seized property pending trial if—

10 “(1) the claimant has a possessory interest in  
11 the property sufficient to establish standing to con-  
12 test forfeiture and has filed a nonfrivolous claim on  
13 the merits of the forfeiture action;

14 “(2) the claimant has sufficient ties to the com-  
15 munity to provide assurance that the property will  
16 be available at the time of the trial;

17 “(3) the continued possession by the United  
18 States pending the final disposition of forfeiture pro-  
19 ceedings will cause substantial hardship to the  
20 claimant, such as preventing the claimant from  
21 working, leaving the claimant homeless, or pre-  
22 venting the functioning of a business;

23 “(4) the hardship to the claimant outweighs the  
24 risk that the property will be destroyed, damaged,  
25 lost, concealed, diminished in value or transferred if

1 the property is returned to the claimant during the  
2 pendency of the proceeding; and

3 “(5) none of the conditions set forth in sub-  
4 section (c) applies.

5 “(b) PROCEDURES.—

6 “(1) IN GENERAL.—The claimant may make a  
7 request for the release of property under this sub-  
8 section at any time after the claim is filed. If, at the  
9 time the request is made, the seizing agency has not  
10 yet referred the claim to a United States attorney  
11 pursuant to section 608 of the Tariff Act of 1930  
12 (19 U.S.C. 1608), the request may only be filed with  
13 the seizing agency or the United States attorney to  
14 whom the claim was referred. In either case, the re-  
15 quest shall set forth the basis on which the require-  
16 ments of subsection (a)(1) are met.

17 “(2) MOTION FOR RETURN OF SEIZED PROP-  
18 erty.—If the seizing agency, or the United States  
19 attorney, as the case may be, denies the request or  
20 fails to act on the request by the deadline for filing  
21 a complaint for forfeiture in response to the claim,  
22 as required under this chapter, the claimant may file  
23 the request as a motion for the return of seized  
24 property in the district court for the district rep-  
25 resented by the United States attorney to whom the

1 claim was referred, or if the claim has not yet been  
2 referred, in the district court that issued the seizure  
3 warrant for the property, or if no warrant was  
4 issued, in any district court that would have jurisdic-  
5 tion to consider a motion for the return of seized  
6 property under rule 41(e) of the Federal Rules of  
7 Criminal Procedure. The motion shall set forth the  
8 basis on which the requirements of subsection (a)  
9 have been met and the steps the claimant has taken  
10 to secure the release of the property from the appro-  
11 priate official.

12 “(3) ACTION BY DISTRICT COURT.—The district  
13 court shall act on a motion made pursuant to this  
14 subsection within 30 days or as soon thereafter as  
15 practicable, and shall grant the motion if the claim-  
16 ant establishes that the requirements of subsection  
17 (a) have been met. All factual evidence shall be sub-  
18 mitted through affidavit. The Government, in re-  
19 sponding to a motion under this subsection, may in  
20 appropriate cases, submit evidence ex parte in order  
21 to avoid disclosing any matter relating to an ongoing  
22 criminal investigation or pending trial.

23 “(4) COURT ORDER TO MAINTAIN VALUE OF  
24 PROPERTY.—If the court grants the motion, the  
25 court shall enter any order necessary to ensure that

1       the value of the property is maintained while the for-  
2       feiture action is pending, including permitting the  
3       inspection, photographing, and inventory of the  
4       property, and the court may take action in accord-  
5       ance with rule E of the Federal Rules of Civil Proce-  
6       dure, Supplemental Rules for Certain Admiralty and  
7       Maritime Claims. If the property to be returned is  
8       an airplane, a vessel, or a motor vehicle with a value  
9       of greater than \$25,000, the claimant shall post a  
10      bond equal to the value of the property, unless the  
11      court waives the bond for good cause. The Govern-  
12      ment may place a lien against the property or file  
13      a lis pendens to ensure that the property is not  
14      transferred to another person. The Government, in  
15      responding to a motion under this subsection, may,  
16      in appropriate cases, submit evidence ex parte in  
17      order to avoid disclosing any matter relating to an  
18      ongoing criminal investigation or pending trial.

19           “(5) REINSTATEMENT OF INSURANCE.—Any in-  
20      surance on the subject property at the time of sei-  
21      zure shall be kept in force, or shall be reinstated if  
22      it has been discontinued since the time of seizure,  
23      prior to return of the property pursuant to this sub-  
24      section, and the court, in appropriate cases, may  
25      also order that such insurance be obtained by the

1 claimant as a condition of release of the property. If  
2 property returned to the claimant under this section  
3 is lost, stolen, or diminished in value, any insurance  
4 proceeds shall be paid to the United States and such  
5 proceeds shall be subject to forfeiture in place of the  
6 property originally seized.

7 “(c) INAPPLICABILITY.—This section does not apply  
8 if the seized property—

9 “(1) is contraband, currency, or other monetary  
10 instrument, or electronic funds;

11 “(2) is evidence of a violation of the law;

12 “(3) by reason of design or other characteristic,  
13 is particularly suited for use in illegal activities; or

14 “(4) is likely to be used to commit additional  
15 criminal acts if returned to the claimant.

16 “(d) CHANGE OF VENUE.—Once a motion for the re-  
17 lease of property under this section is filed, the party filing  
18 the motion or the Government may request that the mo-  
19 tion be transferred to another district in which venue for  
20 the forfeiture action would lie under section 1355(b) of  
21 title 28 pursuant to the change of venue provisions in sec-  
22 tion 1404 of title 28.”.

23 (b) CONFORMING AMENDMENT.—The analysis for  
24 chapter 46 of title 18, United States Code, is amended

1 by inserting after the item relating to section 984 the fol-  
 2 lowing:

“985. Release of property to avoid hardship.”.

3 **SEC. 12. STAY OF CIVIL FORFEITURE CASE.**

4 (a) IN GENERAL.—Section 981(g) of title 18, United  
 5 States Code, is amended to read as follows:

6 “(g) STAY OF CIVIL FORFEITURE CASE.—

7 “(1) IN GENERAL.—Upon the motion of the  
 8 United States, the court shall stay the civil for-  
 9 feiture proceeding if the court determines that civil  
 10 discovery or trial could adversely affect the ability of  
 11 the Government to conduct a related criminal inves-  
 12 tigation or the prosecution of a related criminal  
 13 case.

14 “(2) STAY OF PROCEEDINGS.—Upon the mo-  
 15 tion of a claimant, the court shall stay the civil for-  
 16 feiture proceeding with respect to that claimant if  
 17 the court determines that—

18 “(A) the claimant is the subject of a re-  
 19 lated criminal investigation or case;

20 “(B) the claimant has standing to assert a  
 21 claim in the civil forfeiture proceeding; and

22 “(C) continuation of the forfeiture pro-  
 23 ceeding may infringe upon the right of the  
 24 claimant against self-incrimination in the re-  
 25 lated investigation or case.



1           “(3) PROTECTIVE ORDER LIMITING DIS-  
2           COVERY.—With respect to the impact of civil dis-  
3           covery described in paragraphs (1) and (2), the  
4           court may determine that a stay is unnecessary if a  
5           protective order limiting discovery would protect the  
6           interest of 1 party without unfairly limiting the abil-  
7           ity of the opposing party to pursue the civil case. In  
8           no case, however, shall the court impose a protective  
9           order as an alternative to a stay if the effect of such  
10          protective order would be to allow 1 party to pursue  
11          discovery while the other party is substantially un-  
12          able to do so.

13          “(4) DEFINITIONS.—In this subsection, the  
14          terms ‘related criminal case’ and ‘related criminal  
15          investigation’ mean an actual prosecution or inves-  
16          tigation in progress at the time the request for the  
17          stay, or any subsequent motion to lift the stay is  
18          made. In determining whether a criminal case or in-  
19          vestigation is ‘related’ to a civil forfeiture pro-  
20          ceeding, the court shall consider the degree of simi-  
21          larity between the parties, witnesses, facts, and cir-  
22          cumstances involved in the 2 proceedings without re-  
23          quiring an identity with respect to any 1 or more  
24          factors.

1           “(5) PRESENTATIONS EX PARTE AND UNDER  
2           SEAL.—Any presentation by the Government to the  
3           court under this subsection that involves an ongoing  
4           criminal investigation or prosecution shall be made  
5           ex parte and under seal.

6           “(6) COURT ORDER TO PRESERVE VALUE OF  
7           PROPERTY.—Whenever a civil forfeiture proceeding  
8           is stayed pursuant to this subsection, the court shall  
9           enter any order necessary to preserve the value of  
10          the property or to protect the rights of lienholders  
11          or other persons with an interest in the property  
12          while the stay is in effect.

13          “(7) APPLICABILITY OF STANDING DETERMINA-  
14          TION.—A determination by the court that the claim-  
15          ant has standing to request a stay pursuant to para-  
16          graph (2) shall apply only to this subsection and  
17          shall not preclude the Government from objecting to  
18          the standing of the claimant by dispositive motion or  
19          at the time of trial.”.

20          (b) DRUG FORFEITURES.—Section 511(i) of the Con-  
21          trolled Substances Act (21 U.S.C. 881(i)) is amended to  
22          read as follows:

23          “(i) The provisions of section 981(g) of title 18,  
24          United States Code, regarding the stay of a civil forfeiture  
25          proceeding shall apply to forfeitures under this section.”.

1 **SEC. 13. PREJUDGMENT INTEREST.**

2 (a) IN GENERAL.—Section 2465 of title 28, United  
3 States Code, is amended—

4 (1) by striking “Upon” and inserting the fol-  
5 lowing:

6 “(a) IN GENERAL.—Upon”; and

7 (2) by adding at the end the following:

8 “(b) INTEREST.—Upon entry of judgment for the  
9 claimant in any proceeding to condemn or forfeit property  
10 seized or arrested under provision of title 18, the Con-  
11 trolled Substances Act, or the Immigration and Nation-  
12 ality Act, the United States—

13 “(1) shall be liable for post-judgment interest  
14 as set forth in section 1961;

15 “(2) shall not be liable for prejudgment inter-  
16 est, except that in cases involving currency or other  
17 negotiable instruments, the United States shall dis-  
18 gorge to the claimant any funds representing inter-  
19 est actually paid to the United States from the date  
20 of seizure or arrest of the property, if such interest  
21 resulted from the investment of the property in an  
22 interest-bearing account or instrument; and

23 “(3) shall not be required to disgorge the value  
24 of any intangible benefits nor to make any other  
25 payments of interest or other compensation to the

1 claimant not specifically authorized by this sub-  
2 section.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 subsection (a) shall apply to any judgment entered after  
5 the date of enactment of this Act.

6 **SEC. 14. SEIZURE WARRANT REQUIREMENT.**

7 (a) IN GENERAL.—Section 981(b) of title 18, United  
8 States Code, is amended to read as follows:

9 “(b) SEIZURE WARRANT REQUIREMENT.—

10 “(1) IN GENERAL.—Any property subject to  
11 forfeiture to the United States under this section  
12 may be seized by the Attorney General. In addition,  
13 in the case of property involved in a violation inves-  
14 tigated by the Secretary of the Treasury or the  
15 United States Postal Service, the property may also  
16 be seized by the Secretary of the Treasury or the  
17 United States Postal Service, respectively.

18 “(2) WARRANT REQUIREMENT.—Any seizure  
19 pursuant to this section shall be made pursuant to  
20 a warrant, which may be issued by a magistrate  
21 judge in the same manner as provided for a search  
22 warrant under the Federal Rules of Criminal Proce-  
23 dure, except that a seizure may be made without a  
24 warrant if—

1           “(A) a complaint for forfeiture has been  
2           filed in the district court and the court has  
3           issued an arrest warrant in rem pursuant to the  
4           Federal Rules of Civil Procedure, Supplemental  
5           Rules for Certain Admiralty and Maritime  
6           Claims, based upon a showing of probable  
7           cause;

8           “(B) there is probable cause to believe that  
9           the property is subject to forfeiture and—

10           “(i) the seizure is made pursuant to a  
11           lawful arrest or search; or

12           “(ii) another exception to the fourth  
13           amendment warrant requirement would  
14           apply; or

15           “(C) the property was lawfully seized by a  
16           State or local law enforcement agency and has  
17           been transferred to a Federal agency.

18           “(3) OUT-OF-DISTRICT WARRANTS.—Notwith-  
19           standing rule 41(a) of the Federal Rules of Criminal  
20           Procedure, a seizure warrant may be issued pursu-  
21           ant to this subsection by a judicial officer in any dis-  
22           trict in which a forfeiture action against the prop-  
23           erty may be filed under section 1355(b) of title 28,  
24           and executed in any district in which the property  
25           is found, or transmitted to the central authority of

1 any foreign state for service in accordance with any  
2 treaty or other international agreement. The judicial  
3 officer shall command the officer to seize, within a  
4 specified period of time not to exceed 20 days, the  
5 property specified in the warrant. Any motion for  
6 the return of property seized under this section shall  
7 be filed in the district in which the seizure warrant  
8 was issued.

9 “(4) SUPPRESSION OF EVIDENCE.—A party  
10 with standing to challenge a seizure and forfeiture  
11 under this section may move to suppress the use of  
12 the property as evidence on the ground that the  
13 Government lacked probable cause at the time of the  
14 seizure. Suppression of the property as evidence  
15 shall not affect the right of the Government to pro-  
16 ceed with a forfeiture action based on independently  
17 derived evidence.

18 “(5) PERSONS ARRESTED ABROAD.—

19 “(A) If any person is arrested or charged  
20 in a foreign country in connection with an of-  
21 fense that would give rise to the forfeiture of  
22 property in the United States under this section  
23 or under the Controlled Substances Act, the At-  
24 torney General may apply to any Federal judge  
25 or magistrate judge in the district in which the

1 property is located for an ex parte order re-  
2 straining the property subject to forfeiture for  
3 not more than 30 days, except that the time  
4 may be extended for good cause shown at a  
5 hearing conducted in the manner provided in  
6 rule 43(e) of the Federal Rules of Civil Proce-  
7 dure.

8 “(B) The application for the restraining  
9 order shall set forth the nature and cir-  
10 cumstances of the foreign charges and the basis  
11 for belief that the person arrested or charged  
12 has property in the United States that would be  
13 subject to forfeiture, and shall contain a state-  
14 ment that the restraining order is needed to  
15 preserve the availability of property for such  
16 time as is necessary to receive evidence from  
17 the foreign country or elsewhere in support of  
18 probable cause for the seizure of the property  
19 under this subsection.”.

20 (b) DRUG FORFEITURES.—Section 511(b) of the  
21 Controlled Substances Act (21 U.S.C. 881(b)) is amended  
22 to read as follows:

23 “(b) Any property subject to forfeiture to the United  
24 States under this section may be seized by the Attorney

1 General in the manner set forth in section 981(b) of title  
2 18, United States Code.”.

3 **SEC. 15. CIVIL RESTRAINING ORDERS.**

4 Section 981 of title 18, United States Code, is  
5 amended by adding at the end the following:

6 “(q) RESTRAINING ORDERS.—The court, before or  
7 after the filing of a forfeiture complaint and on the appli-  
8 cation of the Government, may—

9 “(1) enter any restraining order or injunction  
10 pursuant to section 413(e) of the Controlled Sub-  
11 stances Act (21 U.S.C. 853(e));

12 “(2) require the execution of satisfactory per-  
13 formance bonds;

14 “(3) create receiverships;

15 “(4) appoint conservators, custodians, apprais-  
16 ers, accountants, or trustees; or

17 “(5) take any other action to seize, secure,  
18 maintain, or preserve the availability of property  
19 subject to forfeiture under this section.”.

20 **SEC. 16. EXCESSIVE FINES.**

21 Section 981 of title 18, United States Code, is  
22 amended by adding at the end the following:

23 “(r) EXCESSIVE FINES.—At the conclusion of the  
24 trial and following the entry of a verdict of forfeiture—



1 “(1) the claimant may petition the court to de-  
 2 termine whether the excessive fines clause of the  
 3 eighth amendment to the Constitution of the United  
 4 States applies, and if so, whether the forfeiture is  
 5 grossly disproportional to the gravity of the offense;

6 “(2) the claimant shall have the burden of es-  
 7 tablishing that the forfeiture is grossly dispropor-  
 8 tional by a preponderance of the evidence at a hear-  
 9 ing conducted in the manner provided in rule 43(e)  
 10 of the Federal Rules of Civil Procedure, by the court  
 11 without a jury; and

12 “(3) if the court determines that the forfeiture  
 13 is grossly disproportional to the gravity of the of-  
 14 fense, the court shall adjust the forfeiture to the ex-  
 15 tent necessary to avoid the constitutional violation.”.

16 **SEC. 17. CIVIL INVESTIGATIVE DEMANDS.**

17 (a) IN GENERAL.—Section 981 of title 18, United  
 18 States Code, is amended by adding at the end the fol-  
 19 lowing:

20 “(s) CIVIL INVESTIGATIVE DEMAND.—In any inves-  
 21 tigation relating to the seizure or forfeiture of property  
 22 under this section, the Attorney General, the Secretary of  
 23 the Treasury, or their designee, may issue in writing, and  
 24 cause to be served, a subpoena for evidence of the nature,  
 25 and in the manner, described in section 3486.”.

1 (b) OBSTRUCTION OF CIVIL INVESTIGATIVE DE-  
 2 MAND.—Section 1505 of title 18, United States Code, is  
 3 amended by inserting “section 981(s) of this title or” be-  
 4 fore “the Anti-Trust Civil Process Act”.

5 (c) RIGHT TO FINANCIAL PRIVACY ACT AMEND-  
 6 MENT.—Section 1120(b)(1) of the Right to Financial Pri-  
 7 vacy Act (12 U.S.C. 3420(b)(1)) is amended by inserting  
 8 “or civil investigative demand” after “a grand jury sub-  
 9 poena”.

10 (d) FAIR CREDIT REPORTING ACT AMENDMENT.—  
 11 Section 604(a)(1) of the Fair Credit Reporting Act (15  
 12 U.S.C. 1681b(a)(1)) is amended by inserting “or a civil  
 13 investigative demand proceeding” before the period at the  
 14 end.

15 **SEC. 18. ACCESS TO RECORDS IN BANK SECRECY JURISDIC-**  
 16 **TIONS.**

17 Section 986 of title 18, United States Code, is  
 18 amended by adding at the end the following:

19 “(d) ACCESS TO RECORDS LOCATED ABROAD.—

20 “(1) IN GENERAL.—In any civil forfeiture case,  
 21 or in any ancillary proceeding in any criminal for-  
 22 feiture case governed by section 413(n) of the Con-  
 23 trolled Substances Act (21 U.S.C. 853(n)), in  
 24 which—

1           “(A) financial records located in a foreign  
2 country may be material—

3           “(i) to any claim or to the ability of  
4 the Government to respond to such claim;  
5 or

6           “(ii) in a civil forfeiture case, to the  
7 ability of the Government to establish the  
8 forfeitability of the property; and

9           “(B) it is within the capacity of the claim-  
10 ant to waive his or her rights under applicable  
11 financial secrecy laws, or to obtain the records  
12 himself or herself, so that the records can be  
13 made available, the refusal of the claimant to  
14 provide the records in response to a discovery  
15 request or take the action necessary otherwise  
16 to make the records available shall result in the  
17 dismissal of the claim with prejudice.

18           “(2) PRIVILEGE.—This subsection shall not af-  
19 fect the right of the claimant to refuse production on  
20 the basis of any privilege guaranteed by the Con-  
21 stitution of the United States or any other provision  
22 of Federal law.”.

23 **SEC. 19. COOPERATION AMONG FEDERAL PROSECUTORS.**

24           Section 3322(a) of title 18, United States Code, is  
25 amended—

1           (1) by striking “civil forfeiture under section  
2           981 of title 18, United States Code, of property de-  
3           scribed in section 981(a)(1)(C) of such title” and in-  
4           serting “any civil forfeiture provision of Federal  
5           law”; and

6           (2) by striking “concerning a banking law viola-  
7           tion”.

8   **SEC. 20. ACCESS TO OTHER RECORDS.**

9           Section 6103(i)(1) of the Internal Revenue Code of  
10          1986 (26 U.S.C. 6103(i)(1)) is amended—

11           (1) in subparagraph (A)(i), by inserting “or re-  
12           lated civil forfeiture” after “enforcement of a specifi-  
13           cally designated Federal criminal statute”; and

14           (2) in subparagraph (B)(iii), by inserting “or  
15           civil forfeiture investigation or proceeding” after  
16           “Federal criminal investigation or proceeding”.

17   **SEC. 21. STATUTE OF LIMITATIONS FOR CIVIL FORFEITURE**  
18                           **ACTIONS.**

19           Section 621 of the Tariff Act of 1930 (19 U.S.C.  
20          1621) is amended—

21           (1) by inserting “, or in the case of forfeiture,  
22           within five years after the time when the existence  
23           of the property and the involvement of the property  
24           in the alleged offense were discovered” after “within

1 five years after the time when the alleged offense  
2 was discovered”;

3 (2) in paragraph (1), by striking “and” at the  
4 end;

5 (3) in paragraph (2), by striking the period at  
6 the end and inserting “; and”; and

7 (4) by adding at the end the following:

8 “(3) the provisions of section 2415(e) of title  
9 28, United States Code, shall apply to this section.”.

10 **SEC. 22. DESTRUCTION OR REMOVAL OF PROPERTY TO**  
11 **PREVENT SEIZURE.**

12 Section 2232 of title 18, United States Code, is  
13 amended—

14 (1) in subsection (a)—

15 (A) by inserting “or seizure” after “Phys-  
16 ical interference with search”;

17 (B) by inserting “, including seizure for  
18 forfeiture,” after “after seizure”;

19 (C) by striking “searches and seizures”  
20 after “authorized to make” and inserting  
21 “searches or seizures”;

22 (D) by striking “or” after “wares,”; and

23 (E) by inserting “, or other property, real  
24 or personal,” after “merchandise”; and

25 (2) in subsection (b)—

1 (A) by inserting “or seizure” after “Notice  
2 of search”;

3 (B) by striking “searches and seizures”  
4 after “authorized to make” and inserting  
5 “searches or seizures”;

6 (C) by inserting “, including seizure for  
7 forfeiture,” after “likely to make a search or  
8 seizure”; and

9 (D) by inserting “real or personal,” after  
10 “merchandise or other property,”.

11 **SEC. 23. FUNGIBLE PROPERTY IN BANK ACCOUNTS.**

12 (a) IN GENERAL.—Section 984 of title 18, United  
13 States Code, is amended—

14 (1) by striking subsection (a) and redesignating  
15 subsections (b), (c), and (d) as subsections (a), (b),  
16 and (c), respectively; and

17 (2) by striking subsection (b), as redesignated,  
18 and inserting the following:

19 “(b) The provisions of this section may be invoked  
20 only if the action for forfeiture was commenced by a sei-  
21 zure or an arrest in rem within 2 years of the offense that  
22 is the basis for the forfeiture.”;

23 (3) in subsection (c), as redesignated—

24 (A) by striking paragraph (1) and insert-  
25 ing the following:

1           “(1) Subsection (a) does not apply to an action  
2           against funds held by a financial institution in an  
3           interbank account unless the account holder know-  
4           ingly engaged in the offense that is the basis for the  
5           forfeiture.”; and

6           (B) by adding at the end the following:

7           “(3) In this subsection, the term ‘financial in-  
8           stitution’ includes a foreign bank, as defined in sec-  
9           tion 1(b)(7) of the International Banking Act of  
10          1978 (12 U.S.C. 3101).”; and

11          (4) by adding at the end the following:

12          “(d) Nothing in this section may be construed to limit  
13          the ability of the Government to forfeit property under any  
14          provision of law if the property involved in the offense giv-  
15          ing rise to the forfeiture or property traceable thereto is  
16          available for forfeiture.”.

17          (b) **EFFECTIVE DATE.**—The amendments made by  
18          this section shall apply to any transaction occurring on  
19          or after October 28, 1992.

20          **SEC. 24. CURRENCY SEIZED FROM DRUG COURIERS.**

21          Section 511 of the Controlled Substances Act (21  
22          U.S.C. 881) is amended by inserting after subsection (j)  
23          the following:

24          “(k)(1) In any action with respect to the forfeiture  
25          of seized currency pursuant to subsection (a)(6) of this

1 section, or subparagraph (A) or (B) of section 981(a)(1)  
2 of title 18, United States Code, the finder of fact shall  
3 determine the nexus between the currency and the drug  
4 trafficking offense based on the totality of the cir-  
5 cumstances. The presence or absence of any 1 factor shall  
6 not be dispositive.

7 “(2) In making a determination under paragraph (1),  
8 the finder of fact may rely on any of the following factors  
9 as probative of a connection between large quantities of  
10 currency and drug trafficking:

11 “(A) The currency was in excess of the amount  
12 normally carried by legitimate leisure and business  
13 travelers, and was, at the time of seizure, being  
14 transported through an airport, on a highway, or at  
15 a port-of-entry.

16 “(B) The currency was packaged in bundles,  
17 concealed in paper bags, wrapped in cellophane or  
18 other plastic wrap, concealed under clothing, or oth-  
19 erwise being transported in a highly unusual man-  
20 ner.

21 “(C) The currency was packaged with, or found  
22 in proximity to, products or chemicals intended to  
23 conceal odors from a drug detection dog, or had re-  
24 cently been washed or cleaned with water or chemi-  
25 cals designed to remove such odors.



1           “(D) The person transporting the property (or  
2           any portion thereof) provided false information to  
3           any law enforcement officer or inspector who law-  
4           fully stopped the person for investigative purposes or  
5           for purposes of a United States border inspection.

6           “(E) The currency was found in close proximity  
7           to a measurable quantity of any controlled sub-  
8           stance.

9           “(F) The currency was the subject of a positive  
10          alert by a properly trained dog that did not alert to  
11          a controlled sample of currency.

12          “(G) The currency at issue was acquired during  
13          a period of time when the person who acquired the  
14          property was engaged in a drug trafficking offense  
15          or within a reasonable time after such period, and  
16          there is no likely source for such property other than  
17          that offense.

18          “(H) The person transporting the currency had  
19          associated with, or was carrying telephone numbers,  
20          pager numbers, or other information providing a  
21          means of contacting, persons engaged in the illegal  
22          sale and distribution of controlled substances.

23          “(I) The currency was, or was intended to be,  
24          transported, transmitted, or transferred to or from  
25          a major drug-transit country, a major illicit drug

1       producing country, or a major money laundering  
 2       country, as determined pursuant to sections 481(e)  
 3       and 490(h) of the Foreign Assistance Act of 1961  
 4       (22 U.S.C. 2291(e) and 2291j(h)), as applicable.

5           “(J) Any person involved in the transportation  
 6       or intended delivery of the currency has been con-  
 7       victed in any Federal, State, or foreign jurisdiction  
 8       of a drug trafficking offense or a felony involving  
 9       money laundering, or is a fugitive from prosecution  
 10      for such offense.

11          “(3) The listing of probative factors in this subsection  
 12      shall not preclude the development of other judicially rec-  
 13      ognized factors, or the establishment of a basis for for-  
 14      feiture on criteria other than those set forth in this sub-  
 15      section.

16          “(4) In this subsection, the term ‘drug trafficking of-  
 17      fense’ means with respect to an action under—

18           “(A) subsection (a)(6), any illegal exchange in-  
 19      volving a controlled substance or other violation for  
 20      which forfeiture is authorized under that subsection;

21           “(B) section 981(a)(1)(B) of title 18, United  
 22      States Code, any offense against a foreign nation in-  
 23      volving the manufacture, importation, sale, or dis-  
 24      tribution of a controlled substance for which for-  
 25      feiture is authorized under that section; and

1           “(C) section 981(a)(1)(A) of title 18, United  
 2       States Code, an offense involving the felonious man-  
 3       ufacture, importation, receiving, concealment, buy-  
 4       ing, selling, or otherwise dealing in a controlled sub-  
 5       stance, which constitutes a specified unlawful activ-  
 6       ity (as defined in section 1956(c) of title 18, United  
 7       States Code).”.

8   **SEC. 25. USE OF FORFEITED FUNDS TO PAY RESTITUTION**  
 9                           **TO CRIME VICTIMS.**

10       (a) IN GENERAL.—Section 981(e) of title 18, United  
 11       States Code, is amended by striking paragraph (6) and  
 12       inserting the following:

13           “(6) as restoration to any victim of the offense  
 14       giving rise to the forfeiture, including, in the case of  
 15       a money laundering offense, any offense constituting  
 16       the underlying specified unlawful activity; or”.

17       (b) PROCEEDS OF CRIME.—Section 981(a)(1)(C) of  
 18       title 18, United States Code, is amended by striking “af-  
 19       fecting a financial institution”.

20   **SEC. 26. FUGITIVE DISENTITLEMENT.**

21       (a) IN GENERAL.—Chapter 163 of title 28, United  
 22       States Code, is amended by adding at the end the fol-  
 23       lowing:

1 **“§ 2466. Fugitive disentitlement**

2 “Any person who, in order to avoid criminal prosecu-  
 3 tion, purposely leaves the jurisdiction of the United States,  
 4 declines to enter or reenter the United States to submit  
 5 to its jurisdiction, or otherwise evades the jurisdiction of  
 6 the court in which a criminal case is pending against the  
 7 person, may not use the resources of the courts of the  
 8 United States in furtherance of a claim in any related civil  
 9 forfeiture action or a claim in third party proceedings in  
 10 any related criminal forfeiture action.”.

11 (b) CONFORMING AMENDMENT.—The analysis for  
 12 chapter 163 of title 28, United States Code, is amended  
 13 by adding at the end the following:

“2466. Fugitive disentitlement.”.

14 (c) EFFECTIVE DATE.—The amendments made by  
 15 this section shall apply to any case pending on or after  
 16 the date of enactment this Act.

17 **SEC. 27. ENFORCEMENT OF FOREIGN FORFEITURE**  
 18 **JUDGMENT.**

19 (a) IN GENERAL.—Chapter 163 of title 28, United  
 20 States Code, is amended by adding at the end the fol-  
 21 lowing:

22 **“§ 2467. Enforcement of foreign judgment**

23 “(a) DEFINITIONS.—In this section—

24 “(1) the term ‘foreign nation’ means a country  
 25 that has become a party to the United Nations Con-

vention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (referred to in this section as the ‘United Nations Convention’) or a foreign jurisdiction with which the United States has a treaty or other formal international agreement in effect providing for mutual forfeiture assistance; and

“(2) the term ‘value-based confiscation judgment’ means a final order of a foreign nation compelling a defendant, as a consequence of his or her criminal conviction for an offense described in Article 3, Paragraph 1, of the United Nations Convention, or any foreign offense described in section 1956(c)(7)(B) of title 18, to pay a sum of money representing the proceeds of such offense, or property the value of which corresponds to such proceeds.

“(b) REVIEW BY ATTORNEY GENERAL.—

“(1) IN GENERAL.—A foreign nation seeking to have its value-based confiscation judgment registered and enforced by a district court of the United States under this section shall first submit a request to the Attorney General or the designee of the Attorney General, which request shall include—

“(A) a summary of the facts of the case and a description of the criminal proceeding

1           that resulted in the value-based confiscation  
2           judgment;

3           “(B) certified copies of the judgment of  
4           conviction and value-based confiscation judgment;  
5           ment;

6           “(C) an affidavit or sworn declaration establishing that the defendant received notice of  
7           the proceedings in sufficient time to enable the  
8           defendant to defend against the charges and  
9           that the value-based confiscation judgment rendered is in force and is not subject to appeal;  
10          

11          “(D) an affidavit or sworn declaration that  
12          all reasonable efforts have been undertaken to  
13          enforce the value-based confiscation judgment  
14          against the property of the defendant, if any, in  
15          the foreign country; and  
16          

17          “(E) such additional information and evidence as may be required by the Attorney General  
18          or the designee of the Attorney General.  
19          

20          “(2) CERTIFICATION OF REQUEST.—The Attorney  
21          General or the designee of the Attorney General,  
22          in consultation with the Secretary of State or the  
23          designee of the Secretary, shall determine whether to  
24          certify the request, and such decision shall be final  
25          and not subject to either judicial review or review

1 under subchapter II of chapter 5, or chapter 7, of  
 2 title 5 (commonly known as the ‘Administrative Pro-  
 3 cedure Act’).

4 “(c) JURISDICTION AND VENUE.—

5 “(1) IN GENERAL.—If the Attorney General or  
 6 the designee of the Attorney General certifies a re-  
 7 quest under subsection (b), the foreign nation may  
 8 file a civil proceeding in district court of the United  
 9 States seeking to enforce the foreign value-based  
 10 confiscation judgment as if the judgment had been  
 11 entered by a court in the United States.

12 “(2) PROCEEDINGS.—In a proceeding filed  
 13 under paragraph (1)—

14 “(A) the foreign nation shall be the plain-  
 15 tiff and the person against whom the value-  
 16 based confiscation judgment was entered shall  
 17 be the defendant;

18 “(B) venue shall lie in the district court  
 19 for the District of Columbia or in any other dis-  
 20 trict in which the defendant or the property  
 21 that may be the basis for satisfaction of a judg-  
 22 ment under this section may be found; and

23 “(C) the district court shall have personal  
 24 jurisdiction over a defendant residing outside of  
 25 the United States if the defendant is served

1 with process in accordance with rule 4 of the  
2 Federal Rules of Civil Procedure.

3 “(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—

4 “(1) IN GENERAL.—Except as provided in para-  
5 graph (2), the district court shall enter such orders  
6 as may be necessary to enforce the value-based con-  
7 fiscation judgment on behalf of the foreign nation if  
8 the court finds that—

9 “(A) the value-based confiscation judgment  
10 was rendered under a system that provides im-  
11 partial tribunals or procedures compatible with  
12 the requirements of due process of law;

13 “(B) the foreign court had personal juris-  
14 diction over the defendant;

15 “(C) the foreign court had jurisdiction over  
16 the subject matter;

17 “(D) the defendant in the proceedings in  
18 the foreign court received notice of the pro-  
19 ceedings in sufficient time to enable him or her  
20 to defend; and

21 “(E) the judgment was not obtained by  
22 fraud.

23 “(2) EXCEPTION.—Process to enforce a judg-  
24 ment under this section shall be in accordance with  
25 rule 69(a) of the Federal Rules of Civil Procedure.



1       “(e) FINALITY OF FOREIGN FINDINGS.—Upon a  
 2 finding by the district court that the conditions set forth  
 3 in subsection (d) have been satisfied, the court shall be  
 4 bound by the findings of facts to the extent that they are  
 5 stated in the foreign judgment of conviction and value-  
 6 based confiscation judgment.

7       “(f) CURRENCY CONVERSION.—The rate of exchange  
 8 in effect at the time the suit to enforce is filed by the  
 9 foreign nation shall be used in calculating the amount  
 10 stated in any value-based confiscation judgment requiring  
 11 the payment of a sum of money submitted for registra-  
 12 tion.”.

13       (b) CONFORMING AMENDMENT.—The analysis for  
 14 chapter 163 of title 28, United States Code, is amended  
 15 by adding at the end the following:

“2467. Enforcement of foreign judgment.”.

16   **SEC. 28. ENCOURAGING USE OF CRIMINAL FORFEITURE AS**  
 17                           **AN ALTERNATIVE TO CIVIL FORFEITURE.**

18       Section 2461 of title 28, United States Code, is  
 19 amended by adding at the end the following:

20       “(c) If a forfeiture of property is authorized in con-  
 21 nection with a violation of an Act of Congress, and any  
 22 person is charged in an indictment or information with  
 23 such violation but no specific statutory provision is made  
 24 for criminal forfeiture upon conviction, the Government  
 25 may include the forfeiture in the indictment or informa-

tion in accordance with the Federal Rules of Criminal Procedure, and upon conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).”.

**SEC. 29. APPLICATION OF PROCEDURES FOR DRUG CASES.**

Section 511(d) of the Controlled Substances Act (21 U.S.C. 881(d)) is amended by adding at the end the following: “Chapter 46 of title 18, United States Code, applies to any seizure or forfeiture under this section, to the extent applicable and not inconsistent with this section.”.

**SEC. 30. APPLICATION OF PROCEDURES TO OTHER CIVIL FORFEITURES.**

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following:

**“§ 987. Application of procedures**

“The procedures set forth in this chapter relating to civil forfeiture shall apply to all civil forfeitures under any provision of this title.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

“987. Application of procedures.”.

1 **SEC. 31. APPLICATION TO ALIEN SMUGGLING OFFENSES.**

2 (a) AMENDMENT OF THE IMMIGRATION AND NA-  
3 TIONALITY ACT.— Section 274(b) of the Immigration and  
4 Nationality Act (8 U.S.C. 1324(b)) is amended to read  
5 as follows:

6 “(b) SEIZURE AND FORFEITURE.—

7 “(1) IN GENERAL.—Any conveyance, including  
8 any vessel, vehicle, or aircraft, that has been or is  
9 being used in the commission of a violation of sub-  
10 section (a), the gross proceeds of such violation, and  
11 any property traceable to such conveyance or pro-  
12 ceeds, shall be seized and subject to forfeiture.

13 “(2) APPLICABLE PROCEDURES.—Seizures and  
14 forfeitures under this subsection shall be governed  
15 by the provisions of chapter 46 of title 18, United  
16 States Code, relating to civil forfeitures, including  
17 section 981(d) of such title, except that such duties  
18 as are imposed upon the Secretary of the Treasury  
19 under the customs laws described in that section  
20 shall be performed by such officers, agents, and  
21 other persons as may be designated for that purpose  
22 by the Attorney General.

23 “(3) PRIMA FACIE EVIDENCE IN DETERMINA-  
24 TIONS OF VIOLATIONS.—In determining whether a  
25 violation of subsection (a) has occurred, any of the  
26 following shall be prima facie evidence that an alien

1 involved in the alleged violation had not received  
2 prior official authorization to come to, enter, or re-  
3 side in the United States or that such alien had  
4 come to, entered, or remained in the United States  
5 in violation of law:

6 “(A) Records of any judicial or administra-  
7 tive proceeding in which that alien’s status was  
8 an issue and in which it was determined that  
9 the alien had not received prior official author-  
10 ization to come to, enter, or reside in the  
11 United States or that such alien had come to,  
12 entered, or remained in the United States in  
13 violation of law.

14 “(B) Official records of the Service or of  
15 the Department of State showing that the alien  
16 had not received prior official authorization to  
17 come to, enter, or reside in the United States  
18 or that such alien had come to, entered, or re-  
19 mained in the United States in violation of law.

20 “(C) Testimony, by an immigration officer  
21 having personal knowledge of the facts con-  
22 cerning that alien’s status, that the alien had  
23 not received prior official authorization to come  
24 to, enter, or reside in the United States or that

1           such alien had come to, entered, or remained in  
2           the United States in violation of law.”.

3           (b) TECHNICAL CORRECTIONS TO EXISTING CRIMI-  
4 NAL FORFEITURE AUTHORITY.— Section 982(a)(7) of  
5 title 18, United States Code, is amended—

6           (1) by striking “(A)”;

7           (2) by striking subparagraph (B); and

8           (3) by redesignating clauses (i) and (ii) as sub-  
9 paragraphs (A) and (B), respectively;

10          (4) by redesignating subclauses (I) and (II) as  
11 clauses (i) and (ii), respectively;

12          (5) by inserting “section 274(a), 274A(a)(1), or  
13 274A(a)(2) of the Immigration and Nationality Act  
14 or” before “section 1425” the first place it appears;

15          (6) in subparagraph (A), as redesignated by  
16 this subsection, by striking “a violation of, or a con-  
17 spiracy to violate, subsection (a)” and inserting “the  
18 offense of which the person is convicted”; and

19          (7) in subparagraph (B)(i) and (ii), as redesign-  
20 nated by this subsection, by striking “a violation of,  
21 or a conspiracy to violate, subsection (a)” and all  
22 that follows through “of this title” each place it ap-  
23 pears and inserting “the offense of which the person  
24 is convicted”.

1 **SEC. 32. EFFECTIVE DATES.**

2 (a) IN GENERAL.—Unless otherwise specified in this  
3 Act, the amendments made by this Act apply to any for-  
4 feiture proceeding commenced on or after the date of en-  
5 actment of this Act.

6 (b) ADMINISTRATIVE FORFEITURES.—The amend-  
7 ments made by this Act relating to seizures and adminis-  
8 trative forfeitures shall apply to seizures occurring on or  
9 after the 90th day after the date of enactment of this Act.

10 (c) CIVIL JUDICIAL FORFEITURES.—The amend-  
11 ments made by this Act relating to judicial procedures ap-  
12 plicable once a civil forfeiture complaint is filed by the  
13 Government shall apply to any case in which the forfeiture  
14 complaint is filed on or after the date of enactment of this  
15 Act.

16 (d) SUBSTANTIVE LAW.—The amendments made by  
17 this Act expanding substantive forfeiture law to make  
18 property subject to civil or criminal forfeiture that was not  
19 previously subject to civil or criminal forfeiture shall apply  
20 to any offense occurring after the date of enactment of  
21 this Act.

○